

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Gilbert Demetrius Aguilar,  
Petitioner  
v.  
T. Thomas, et al.,  
Respondents

Case No.: 2:18-cv-01567-JAD-CWH

**Order Dismissing Petition**

[ECF Nos. 1-1, 4, 5]

Petitioner Gilbert Demetrius Aguilar has not properly commenced this 28 U.S.C. § 2254 action by paying the filing fee or filing a complete *in forma pauperis* application.<sup>1</sup> Plus, because the petition is second or successive, this court lacks jurisdiction to consider it. I dismiss this petition on both grounds and without prejudice.

Aguilar brings this petition to challenge a judgment of conviction entered on January 9, 1998, in Case No. 96C138024-2 in the Eighth Judicial District Court.<sup>2</sup> He acknowledges that he previously challenged this same judgment of conviction in Case No. 3:12-cv-00397-MMD-WGC.<sup>3</sup> In that case, the court entered an order and judgment denying the petition on its merits on July 10, 2018. Aguilar has not appealed that decision.

Under 28 U.S.C. § 2244(b)(3), before a petitioner may file a second or successive petition, he must move in the court of appeals for an order authorizing the district court to consider the petition. A federal district court does not have jurisdiction to entertain a successive

---

<sup>1</sup> LSR 1-1 & 1-2. More than a week after initiating this action without an application to proceed *in forma pauperis*, petitioner filed a financial certificate. See ECF No. 3. He did not file and has not filed either an application to proceed *in forma pauperis* or his monthly inmate account statements for the past six months. His request to proceed *in forma pauperis* is therefore still deficient.

<sup>2</sup> ECF No. 1-1 at 1.

<sup>3</sup> *Id.* at 2.

1 petition absent such permission.<sup>4</sup> Because Aguilar seeks to challenge his custody under the same  
2 judgment of conviction that he previously challenged in his 2012 case, which was decided on its  
3 merits, this new petition constitutes a second or successive petition that requires appellate-court  
4 permission to commence. Aguilar does not indicate that he has received authorization from the  
5 Court of Appeals to file this second or successive petition, and the records of the Court of  
6 Appeals do not reflect that he has sought to obtain any such authorization. So this court lacks  
7 jurisdiction over this instant petition, and it must be dismissed as successive.

8 Petitioner has also filed a motion for appointment of counsel and motion for evidentiary  
9 hearing.<sup>5</sup> Because I lack jurisdiction to consider the petition and I am dismissing this petition on  
10 that basis, I deny both motions as moot.


11 IT THEREFORE IS ORDERED that this action is DISMISSED WITHOUT  
12 PREJUDICE;

13 IT IS FURTHER ORDERED that the petitioner is denied a certificate of appealability  
14 because jurists of reason would not find my dismissal of this petition on procedural and  
15 jurisdictional grounds to be debatable or wrong;

16 IT IS FURTHER ORDERED that the motion for appointment of counsel and the motion  
17 for evidentiary hearing **[ECF Nos. 4, 5] are DENIED;** and

18 The Clerk of Court is directed to FILE the petition [ECF No. 1-1], ENTER final  
19 judgment accordingly, and close this case.

20 Dated: September 5, 2018

21   
22 U.S. District Judge Jennifer A. Dorsey  
23  
24  
25

26  
27 <sup>4</sup> *E.g., Burton v. Stewart*, 549 U.S. 147, 149 & 152 53 (2007).

28 <sup>5</sup> ECF Nos. 4 & 5.